IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1913 OF 2000

Shri N.T.Kate ...Applicant

Vs.

Harjiwan B. Patel & Anr. ...Respondents

Shri H.V.Mehta for the Applicant.
Shri Abdul Kadar Millwalla i/by Shri Girish Kulkarni
and Hemant Vadke for the Respondent No.1.
Shri A.S.Shitole, A.P.P. for the State.

CORAM : A. S. OKA, J.
DATE : SEPTEMBER 22, 2006.

P.C.:

1. This is an Application for grant of leave to prefer an Appeal against acquittal against the order dated 21st November, 1999. The offence alleged against the first Respondent was under section 85(a) of the Employees' State Insurance Act, 1948. The learned Magistrate has passed an order of acquittal on three grounds. Firstly, there was no evidence to show that a show cause notice was received by the accused. Secondly, that the accused has made payment of contribution after filing of the complaint and thirdly, that the sanction was not valid as the order granting sanction does not refer to the documents read by the sanctioning authority.

2. Shri Mehta appearing for the Applicant submitted that so far as issue of sanction is concerned, the same is covered by a decision of this Court in the case of N.T.Kate, Insurance Inspector, Employees State Insurance Corporation Vs. Yogendra (2002 III CLR Page 1008). He relied upon paragraph Nos.11 and 12 of the said decision. He submitted that service of show cause notice was irrelevant. He submitted that payment of contribution was made after the prosecution was lodged.

3. I have considered the submissions. The learned Trial Judge in paragraph No.6 of the impugned order has held thus:

> "6. That though sanction order is placed on record but there is no evidence to show what documents were placed before the sanctioning authority at the time of granting of the sanction. The sanction order has also does not mention which documents were read by the sanctioning authority before granting the sanction. P.W.No.2 Uchil deposed that he obtained the sanction order for prosecution from the Jt. Reg. Director and in the cross

> examination he has admitted that he has only forwarded the U.O.Note vide Ex.P.4. The sanction order at Ex.P.1 is signed by the Reg.Director. It is also important to note that Ex.P.4 is dated 2.4.91 whereas the sanction order Ex.P.1. is dated 10.9.91."

In this case the order of sanction was passed by the Joint Regional Director. P.W.2 deposed that he had only forwarded the U.O. Note to the Director.

4. Reliance has been placed on the decision of this court in the case of N.T.Kate (supra). This was a case where order of acquittal was passed on the ground that there was no proper sanction. In paragraph No.10 of the said decision, the learned single Judge has held thus:

> "10. It is also pertinent to note that in the same paragraph the learned Judge has observed that the sanction to prosecute required in this case is a formal sanction and all that the sanctioning authority has to ascertain is (a) whether the accused was covered (b) whether the contribution has been

made (c) whether the returns have been filed and lastly whether there is compliance if notice has been served, and if on the basis of the aforesaid determination, it is found that the default subsists, the sanction to prosecute would certainly be a valid one even if detailed computations having not been done."

Thus, what has been held by the learned single Judge is that sanctioning authority has to ascertain whether the returns have been filed and lastly whether there is a compliance if notice has been served and on the basis of the aforesaid determination, the sanction has to be given. It is held that it is not necessary to specify the amount in respect of which default has been committed.

5. A copy of the order of sanction is annexed as Exhibit B to the Application. In the said order of sanction it is stated that the contributions for the period of October 1989, November 1989 and December 1989 were not paid. There is no reference in the said order as to whether notice was served. In paragraph No.2 of the impugned order the learned Judge has held that P.W.2 could not establish whether the notice was

served. In the present case order of sanction is not held to be illegal only on the ground that the amount is not mentioned in the order of sanction. This court in the case of N.T.Kate (supra) has held that there has to be determination by sanctioning authority as regards factors which are enumerated in the paragraph No.10 of the said decision. In the present case, there is no evidence to show that sanction was issued after such determination. Hence, I find no infirmity with the order of acquittal. Accordingly, Application for leave is rejected.

JUDGE